

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELIZABETH B. ¹ ,)	
)	
Plaintiff,)	
)	
v.)	No. 1:20-cv-00427-JPH-TAB
)	
KILOLO KIJAKAZI, Acting Commissioner)	
of the Social Security Administration, ²)	
)	
Defendant.)	

ENTRY REVIEWING THE COMMISSIONER'S DECISION

Plaintiff seeks judicial review of the Social Security Administration's ("SSA's") decision denying her petition for Disability Insurance Benefits and Supplemental Security Income. She argues that the Administrative Law Judge's ("ALJ's") decision is unsupported by substantial evidence because, in determining her Residual Functional Capacity ("RFC"), the ALJ did not address medical providers' recommendations that Plaintiff elevate her feet above heart level to mitigate pain and swelling in her feet. For the reasons that follow, the decision is **REVERSED and REMANDED**.

¹ To protect the privacy interests of claimants for Social Security benefits, consistent with the recommendation of the Court Administration and Case Management Committee of the Administrative Office of the United States Courts, the Southern District of Indiana has opted to use only the first name and last initial of non-governmental parties in its Social Security judicial review opinions.

² Under Federal Rule of Civil Procedure 25(d), after the removal of Andrew M. Saul from his office as Commissioner of the SSA on July 9, 2021, Kilolo Kijakazi automatically became the Defendant in this case when she was named as the Acting Commissioner of the SSA.

I.
Facts and Background³

Plaintiff was 50 years old at the alleged onset date of her disability. *See* dkt. 12-2 at 12, 50. She had completed eighth grade and worked in the past as a foam rubber fabricator, cleaner, and cashier. *Id.* at 13, 19, 34–35, 46.

Plaintiff applied for Disability Insurance Benefits and Supplemental Security Income in September 2016, with an alleged onset date in September 2014. *Id.* at 10. Plaintiff's application was denied initially and on reconsideration. *Id.* The ALJ held a hearing on October 4, 2018, and, in January 2019, issued a decision denying Plaintiff's claims. *Id.* at 10, 20. The appeals council denied review in December 2019, *id.* at 1, and Plaintiff brought this action asking the Court to review the denial of benefits under 42 U.S.C. §§ 405(g) and 1383(c), dkt. 1 at 1.

In her decision, the ALJ followed the five-step sequential evaluation in 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4), and concluded that Plaintiff was not disabled. Dkt. 12-2 at 11–20. Specifically, the ALJ found that:

- At Step One, Plaintiff had not engaged in substantial gainful activity since the alleged onset date. Dkt. 12-2 at 12.
- At Step Two, she had "the following severe impairments: Chronic Obstructive Pulmonary Disease; Spondylosis, with lumbar degenerative disc disease, scoliosis lumbar facet arthritis, and lumbar radiculopathy; and left hip Bursitis." *Id.*
- At Step Three, she did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. *Id.* at 15.

³ Evidence in the record is amply set forth in the parties' briefs and need not be repeated here. Specific facts relevant to the Court's disposition of this case are discussed below.

- After Step Three but before Step Four, she had the RFC "to perform light work . . . except: She is able to lift up to twenty pounds occasionally and she is able to lift or carry up to ten pounds frequently. She is able to stand or walk for six hours [during] an eight-hour workday with ordinary breaks and she is able to sit for six hours during an eight-hour workday with ordinary breaks. She is able to climb stairs or ramps occasionally. She is able to balance while on level surfaces occasionally. She is able to stoop, kneel, crouch, or crawl occasionally. She must avoid concentrated exposure to extreme cold, extreme heat, humidity, and respiratory irritants such as fumes, odors, dust, or gases. She must avoid vibrations and unprotected heights. She is able to perform unskilled work." *Id.* at 17.
- At Step Four, Plaintiff "is capable of performing past relevant work as a Foam Rubber Fabricator." *Id.* at 19.

II. Applicable Law

"The Social Security Act authorizes payment of disability insurance benefits . . . to individuals with disabilities." *Barnhart v. Walton*, 535 U.S. 212, 214 (2002). When an applicant seeks judicial review of a benefits denial, the Court's role is limited to ensuring that the ALJ applied the correct legal standards and that substantial evidence supports the ALJ's decision. *Barnett v. Barnhart*, 381 F.3d 664, 668 (7th Cir. 2004).

The ALJ must apply the five-step inquiry set forth in 20 C.F.R. § 404.1520(a)(4)(i)–(v), evaluating in sequence:

(1) whether the claimant is currently unemployed; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets or equals one of the impairments listed by the [Commissioner]; (4) whether the claimant can perform her past work; and (5) whether the claimant is capable of performing work in the national economy.

Clifford v. Apfel, 227 F.3d 863, 868 (7th Cir. 2000) (citation omitted). "If a claimant satisfies steps one, two, and three, she will automatically be found

disabled. If a claimant satisfies steps one and two, but not three, then she must satisfy step four. Once step four is satisfied, the burden shifts to the SSA to establish that the claimant is capable of performing work in the national economy." *Knight v. Chater*, 55 F.3d 309, 313 (7th Cir. 1995).

After step three, but before step four, the ALJ must determine a claimant's RFC by evaluating "all limitations that arise from medically determinable impairments, even those that are not severe." *Villano v. Astrue*, 556 F.3d 558, 563 (7th Cir. 2009). The ALJ uses the RFC at step four to determine whether the claimant can perform her own past relevant work and, if not, at step five to determine whether the claimant can perform other work. See 20 C.F.R. § 404.1520(e), (g).

If the ALJ committed no legal error and substantial evidence supports the ALJ's decision, the Court must affirm the benefit denial. *Barnett*, 381 F.3d at 668. When an ALJ's decision is not supported by substantial evidence, a remand for further proceedings is typically appropriate. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 355 (7th Cir. 2005).

III. Analysis

Plaintiff contends that the ALJ's RFC assessment ignored medical providers' recommendation that she elevate her feet above her heart when seated. See *dk.* 15 at 30–31. The Commissioner argues that the ALJ addressed this evidence. *Dkt.* 23 at 17.

"[A]n ALJ has the obligation to consider all relevant medical evidence and cannot simply cherry-pick facts that support a finding of non-disability while ignoring evidence that points to a disability finding." *Denton v. Astrue*, 596 F.3d 419, 425 (7th Cir. 2010). And although "an ALJ need not mention every piece of evidence in her opinion, she cannot ignore a line of evidence that suggests a disability." *Bates v. Colvin*, 736 F.3d 1093, 1099 (7th Cir. 2013). For treating physician recommendations, an "ALJ is not required to adopt the recommendations" but "must provide enough analysis to allow a reviewing court some idea of why she rejected it." *Spicher v. Berryhill*, 898 F.3d 754, 757–58 (7th Cir. 2018) (citation omitted); see *Stage v. Colvin*, 812 F.3d 1121, 1126 (7th Cir. 2016) ("An ALJ who does not credit to [a treating physician's] opinion must offer good reasons for doing so . . .").

Here, Plaintiff has seen multiple physicians regarding her general pain and swelling in her feet. See, e.g., dkt. 12-11 at 123; dkt. 12-8 at 2. On April 21, 2018, Plaintiff visited the emergency room, where she was treated by Dr. Regal.⁴ Dkt. 12-11 at 123. On discharge, Dr. Regal advised "keeping [the Plaintiff's] legs elevated when she is sitting." *Id.* Dr. Regal also recommended a follow up appointment with Plaintiff's primary care physician, which Plaintiff attended on May 15, 2018. *Id.*; dkt. 12-8 at 1. At this appointment, Nurse

⁴ Although this evidence was well after Plaintiff's initial filing and just a few months before the ALJ hearing, the ALJ still must consider it. See *Lambert v. Berryhill*, 896 F.3d 768, 776 (7th Cir. 2018) ("ALJs may not rely on outdated opinions of agency consultants 'if later evidence containing new, significant medical diagnoses reasonably could have changed the reviewing physician's opinion'"); *Moreno v. Berryhill*, 882 F.3d 722, 728 (7th Cir. 2018).

Practitioner⁵ Doshia Burk advised Plaintiff to "elevate [her] legs above the heart when sitting." Dkt. 12-8 at 2.

At the ALJ hearing, the ALJ asked Plaintiff what prevented her from working. Dkt. 12-2 at 31. In response, Plaintiff stated, "[I]f I sit down too long without elevating my feet, I can't stand. So I have to elevate my feet at all times." *Id.* After the ALJ asked how many hours Plaintiff had to elevate her feet, Plaintiff explained that she generally elevated her feet about eight hours a day besides when she goes to bed. *Id.* And she said she "ha[d] to sleep in a recliner to elevate [her] legs." *Id.* At another point, the Plaintiff said that she "cannot lay down in bed" because it "cuts off circulation to [her] legs," so she has to "elevate [her] legs." *Id.* at 37; *see also id.* at 46 (again stating need to elevate her legs above her heart).

The ALJ's hypotheticals to the Vocational Expert ("VE") did not contain a limitation for elevating Plaintiff's legs above her heart while seated. *See id.* at 46–48. However, when Plaintiff's attorney posed a hypothetical including a requirement for an employee to "elevate her feet above her heart whenever she is seated," the VE answered that the person would be unable to "sustain any competitive employment." *Id.* at 48.

In her decision, the ALJ mentioned that the Plaintiff "said she must keep her legs elevated for eight-hour periods." *Id.* at 18. But the ALJ concluded:

⁵ Although a Nurse Practitioner is not an "acceptable medical source" for claims filed before March 27, 2017, the ALJ still must "minimally articulate" her reasons as to why she gave the opinion less weight. *Brumbaugh v. Saul*, 850 Fed. App'x 973, 976 (7th Cir. 2021); *Sosh v. Saul*, 818 Fed. App'x 542, 547 (7th Cir. 2020).

After careful consideration of the evidence, I find that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record.

Id.

The Seventh Circuit has consistently ruled that boilerplate statements like this, without more, are insufficient. *See, e.g., Parker v. Astrue*, 597 F.3d 920, 921–22 (7th Cir. 2010) (holding a nearly identical statement to be "meaningless boilerplate").

Here, the ALJ's opinion essentially was boilerplate and did not mention the two treatment-provider reports advising Plaintiff to keep her legs lifted above her heart while seated. *See* *dk. 12-2* at 11–20. The ALJ did not "offer good reasons" (or any reason) for not crediting these medical reports. *See Stage*, 812 F.3d at 1126. The ALJ thus has not offered "enough analysis to allow a reviewing court some idea of why [she] rejected" the treating physician's opinions. *See Spicher*, 898 F.3d at 757–58.

Because the ALJ offered only a boilerplate explanation for discounting Plaintiff's testimony on her need to elevate her legs and did not address her treating physicians' recommendations, remand is necessary. *See, e.g., Bates*, 736 F.3d at 1099 (reversing because ALJ had ignored line of evidence supporting claim); *Scrogam v. Colvin*, 765 F.3d 685, 698–700 (7th Cir. 2014) (reversing because ALJ had disregarded evidence undermining finding that

claimant wasn't disabled).⁶ The Court's remand should not be interpreted as expressing any views as to the merits of Plaintiff's claim for benefits, but only as an instruction to address the issues sufficiently to make clear why the ALJ accepts or rejects recommendations of medical providers.

IV. Conclusion

For the reasons detailed herein, the Court **REVERSES** the ALJ's decision denying the Plaintiff benefits and **REMANDS** this matter for further proceedings under 42 U.S.C. § 405(g) as detailed above. Final judgment will issue by separate entry.

SO ORDERED.

Date: 8/11/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

⁶ Because the Plaintiff's RFC argument based on her need for leg elevation requires remand, the Court does not address her other arguments.

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